

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 690 of 1978

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

GHELABHAI S RABARI

Appearance:

MR PRANAV G DESAI for Petitioner
NOTICE SERVED for Respondent No. 1
MR PV NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 16/06/2000

ORAL JUDGEMENT

The Motor Accident Claims Tribunal, Surat by its
common judgment and order dated 24.1.78 dismissed two
claim petitions being MAC Petition No. 92/76 filed by
the Gujarat State Road Transport Corporation (present

appellant) claiming Rs. 18,561-93ps being the amount of damage to their bus No. GTH 4536 and the amount of compensation paid by the appellant to the heirs and legal representatives of deceased driver of the said Bus, and MAC Petition No. 46/77 filed by the heirs of deceased driver Babubhai Brahmbhatt claiming total compensation of Rs. 75,000/ for the death of the deceased. The Tribunal dismissed both the claim petitions on the ground that since the deceased bus driver Babubhai Brahmbhatt himself was rash and negligent, the appellant-GSRTC and the heirs and legal representatives of the deceased bus driver are not entitled to receive any amount of compensation. The appellant-GSRTC filed the present appeal challenging the said judgment and order passed in MAC Petition No. 92 of 1976.

The accident in question took place on March 19, 1976, in the evening at 7.20p.m. when the bus No. GTH 4536 was collided with truck no. GTX 4883, on the road that goes from Surat to Kamrej cross-roads. It runs from east to west, towards east being Kamrej and towards west being Surat. It is the case of the appellant that because of the rash and negligent driving of driver of the offending truck no. GTX 4883, deceased Babubhai sustained injuries and died and, there was damage to ST bus no. GTH 4536. It is, however, the case of the opponents that it was because of the negligence on the part of the deceased driver Babubhai of the ST bus the accident has occurred and, therefore, they are not liable to pay any amount of damage. The appellant has examined its conductor Mohomad Ismail Huseinbhai Vaidhya as witness no. 1 and the opponent no. 1 has been examined as witness no. 1 for the opponent in support of their case, who at the relevant time was the driver of the truck. Over and above the oral evidence, there is a panchnama ex. 49 produced in the case. The said panchnama was drawn on the next day of the accident i.e. on March 20, 1976 between 7.30 to 8.30a.m. The panchnama reveals the following facts:

The accident is alleged to have taken place on March 19, 1976 in the evening at 7.20p.m. The road over which the accident took place is the road that goes from Surat to Kamrej cross-roads. It runs from east to west, towards east being Kamrej and towards west being Surat. It is an asphalt road of 18 feet in width. The S.T. bus No. GTH 4536 was found having its head towards west, i.e. towards Surat. There was damage to the front part of the drivers side of that bus, driver's side door was broken and had fallen out. The pillars in front of the

driver's side were also broken. The wind-screen on the driver's side was also broken along with its frame. Desk board and steering were also broken. The steering had become flat in shape. The pillar behind the driver's seat was broken and the adjacent sheet of the body was torn to the extent of two feet and was hanging, the mudguard on the driver's side wheel was also damaged, its sheet was broken and it was hanging. There was application of green colour on the first pillar on the driver's side as well as on the sheet. The piece of wood forming part of carrier body of the truck had pierced the grill behind the driver's seat alongwith its angle, and the radiator was damaged. There were pieces of glass lying scattered on the road. There were also pieces of plank of greed colour of the truck on the road. The pieces of the sheet of the body of the bus were also lying scattered on the road. The first aid box kept on the driver's side was also broken and was lying in hanging position. So far as the position of the bus is concerned, it shows that to the left side of the left front wheel of the bus, there was open road of 12-1/2 feet. It shows that so far as the rear wheels of the bus are concerned, one was on the asphalt road and the other was on the kutchcha road. To the right side rear wheel, there was open road of 11-1/2 feet. This description shows that the bus was standing oblique, the front part,in the middle of the road and the rear part to its left. It further shows that the door of the driver's side of the cabin of the bus was dismantted and was lying at a distance of about 10 feet at the back of the bus. Near that horn as well as the broken sheet of the body of the bus were lying. Near that place, were some broken pieces of glass lying scattered.

So far as truck no. GTX 4883 is concerned, it was found in such a position that its head was towards west i.e. towards Kamrej cross-roads. Its right side wheels were on the asphalt road. From its right side front wheel to its south, was open road of 12-1/2 feet. Measured from the right rear wheel, the open road to the south was 11-1/2 feet. It is,therefore, clear that the truck was so standing that its right side wheels were on the asphalt road having on its right side, open road of about 11 to 12 feet, and having its left side wheels on the Kutchcha road. It also shows that it was standing straight and not in oblique position. So far as the damage to it is concerned, it shows that there was some bent on the right side front mudguard. There was also scratch thereon. The handle meant for entering driver's side door was pressed and there was scratch thereon. Its side glass was broken. Ribbon on the cabin was broken.

The plank behind the back of the cabin and on the right side of the body was broken along with its angle. That plank was the very plank found pierced in the bus upto the grill behind the driver's seat. The pipe meant for support fixed at the back of the driver's cabin in the truck, was lying broken. Some pieces of glass were lying scattered in the body of the truck. From the above description of the vehicles in the panchnama, it is clear that after impact, the bus was standing in oblique position whereas the truck was in standing position. It also shows that the front part of the bus was in the middle of the road, whereas its rear part was to the left. It is further go to show that the bus after the occurrence of the accident, in order to go over the culvert, which was ahead of it, must have moved to the right and that is how there was striking between its right front corner and the body part of the truck. Mohomad Ismail Huseinbhai Vaidhya, the conductor of the ST bus in his evidence has admitted that the offending truck had given signal of full light which would go to suggest that the offending truck wanted to cross over the culvert. He has also admitted that the asphalt road is 17 to 18 feet in width having metal shoulders on both sides. He has also admited that asphalt road of 5 to 6 feet in width on their right side was open when this accident occurred. He has admitted that the width of the bus seven feet and metal shoulders on each side of the road was of five feet in width. His admission to the effect that the asphalt road of five to six feet in width was open on the right side of the bus, shows that at the time of the occurrence of the accident, the front part of the bus was just in the middle of the road. This fact gets support from the very facts stated in the panchnama which shows that the front part of the bus was just in the middle of the road even after the occurrence of the accident. The witness has further admitted that at the time of occurrence of the accident, the natural light was so dim that, without head lights on to the vehicles, it was not possible to drive. This would go to show that the natural light was not sufficient. According to this witness, except the cabin of the driver of the truck, no other part of the truck struck with the bus. According to him, except the right front corner of the body of the truck, no other part of the truck struck with the bus, and that except the breaking of the plank of the body of the truck, there was no damage to the truck. Even from the evidence of this witness, it appears that at the relevant time, the truck was coming from the opposite direction and it was coming from the direction in which there was culvert over the road which was so narrow that it did not permit two vehicles to pass simultaneously.

Admittedly, the accident took place after the truck crossed over the culvert. In view of the head light signal given by the driver of the truck, the driver of the bus did have ventured to proceed ahead.

The driver of the offending truck namely Ghelabhai Shakrabhai Bharwad has been examined in the case. Reading his evidence, it is clear that he was driving his truck with lights on because of the darkness at that time. It is also clear that at the time when the accident was occurred, the right side wheels of his truck were on the asphalt road and the left side wheels were on the kutchcha road. Thus, his evidence is in conformity with the panchnama. The evidence of the truck driver would further suggest that he had passed over the culvert and thereafter the accident took place. In view of the panchnama as well as evidence on record, it is clear that the truck has already crossed over the culvert which was so narrow that it did not permit two vehicles to pass simultaneously. The accident took place just near the culvert after the truck passed the culvert. In view of the fact that the truck driver gave signal of full lights to the vehicle coming from the opposite direction that the vehicle coming with full lights proposes to pass over. Under the circumstance, the driver of the bus could have stopped the bus and allowed the truck to pass over. Since the bus is struck to the truck was having its front portion in the middle of the road which necessarily follows that it wanted to pass over the culvert even though the truck was coming from the opposite direction. Because of the full light signal given by the driver of the truck, the truck driver was entitled to have a preference of passing over the culvert. Since the deceased driver of the bus did not pay any heed to the signal and tried to enter the culvert and thereafter, the unfortunate accident has taken place for which the driver of the bus was himself responsible. In my opinion, the learned Tribunal was perfectly justified in holding that because of the rash and negligence on the part of the driver of the bus, the accident was resulted and, therefore, the appellant was not entitled to claim any amount of compensation. Since I am in total agreement with the reasonings of the learned Tribunal, the obvious conclusion is that there is no merits in this appeal, and therefore, same is dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

mandora/

